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No. 85-1708

IN THE

SUPREME COURT

OF THE
UNITED STATES

OCTOBER TERM, 1985

STATE OF CALIFORNIA, et al.,

Appellants,

v.

CABAZON BAND OF MISSION INDIANS, et al.,

Appellees.

On Appeal from the United States Court of Appeals
for the Ninth Circuit

BRIEF OF THE STATE OF WASHINGTON AS AMICUS CURIAE IN SUPPORT OF JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether state and local laws prohibiting commercial gambling apply to Indian gambling operations, conducted on Indian reservations, that are patronized primarily by non-Indians.

TABLE OF CONTENTS

	Page
Question presented	i
Interest of the State of Washington as Amicus Curiae	1
Reasons for Granting Plenary Review	2
Conclusion	4

TABLE OF AUTHORITIES

Rice V. Rehner, 463 U.S. 713 (1983)	2
United States v. Marcyes, 557 F.2d 1361 (9th Cir. 1977)	2
Washington v. Confederated Tribes of the Colville Reservation, 447 U.S. 134 (1980)	2

OTHER AUTHORITIES

General Population Characteristics, United States Summary, 1980 Census of Population, Bureau of the Census	1

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INTEREST OF THE STATE OF WASHINGTON AS AMICUS CURIAE

In the State of Washington there are twenty-five Indian reservations. Taken as a whole, the population of these reservations is predominantly non-Indian. According to 1980 federal census data, some 79,000 persons live within twenty-three of these reservations, of whom some 16,000 are Indians and the rest, some 63,000, are non-Indians.[1]

[1] Two of the twenty-five have no population at all. For reservation-by-reservation population figures, see General Population Characteristics, United States Summary, 1980 Census of Population, Bureau of the Census, Table 71, "General Characteristics for American Indian Persons on Reservations and Alaska Native Villages," pp. 1-300 through 1-303.

Moreover, many of these reservations are located in the Puget Sound area, the State's major population center. As would be expected, it is on these reservations that the Indian gambling problem has primarily developed. There are three Indian bingo operations on the Puyallup Reservation, which is located within and adjacent to the City of Tacoma, and one each on the Muckleshoot, Tulalip, and Swinomish Reservations. None of these operations, of course, comply with state law, and they all cater to a predominantly non-Indian clientele.

Further, we would expect the attraction of economic gains to result in Tribes expanding their efforts to exploit their proximity to a large non-Indian market. This may well include utilization of other revenue sources than gambling.

Hence Washington's great interest in this case.

REASONS FOR GRANTING PLENARY REVIEW

Even when viewed narrowly, the Question Presented in this case is substantial and of nationwide importance. As pointed out in California's Jurisdictional Statement and in the amicus brief of Florida and other states, there are over 100 Indian gambling operations spread over 19 states. And the Supreme Courts of Maine and Oklahoma are in conflict with the Court of Appeals for the Fifth and Ninth Circuits on the question of the applicability of state law to those operations. We concur fully with the views expressed in the Jurisdictional Statement and the Florida amicus brief, and need not repeat them here.

We submit this separate brief, however, in order to add a somewhat different and perhaps broader perspective on the Question Presented. The gambling problem is but one part of a larger problem which Washington and many of her sister states are encountering. This larger problem stems from the efforts of various sorts by Indian tribes to utilize their asserted immunity from state law, together with their proximity to non-Indian neighbors, for at least

three purposes. The first is to confer on non-Indians an immunity from state tax laws. The second is to shield certain types of conduct from the reach of state law. And the third is to market to non-Indians, such as the non-Indian operators of bingo games, the economic benefit of the Tribe's own immunity.

With respect to the first purpose, those efforts have included sales of untaxed cigarettes and liquor to non-Indians, and have been unsuccessful. See *Confederated Tribes of the Colville Reservation, supra,* and *Rice v Rehner,* 463 U.S. 713 (1983). With respect to the second, those efforts have included sales of dangerous fireworks that are illegal under state law. See *United States v. Marcyes,* 557 F.2d 1361 (9th Cir. 1977). And they may include in the future such things as tribal sheltering of non-Indian businesses from state environmental laws, *e.g.,* laws controlling disposal of hazardous wastes.

In these gambling cases, as with fireworks and hazardous waste, the states are not trying to protect a source of state revenue. Rather, they are trying to protect their own citizens from a serious social danger. The tribal immunity from state law is being used for both the second and third purposes, i.e., to shield not only the players but also the non-Indian professional operators of gambling games who share a large part of the profits.

One would hope that the lower courts, in dealing with these problems in the future, could be guided by clear, workable principles of law. But the conflict that exists between the State Supreme Courts and the Federal Courts of Appeal on the Indian gambling question surely reflects the fact that clear guidance of this sort is not yet available. The reason for the conflict is even more important than the fact of its existence.

This case is an opportunity to provide this much needed guidance. And that is an additional reason for granting plenary review.

CONCLUSION

For the reasons stated above, probable jurisdiction should be noted.

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